ISSUE DATE: October 25, 1996

DOCKET NO. E-130/SA-95-1262

ORDER DENYING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs	Chair
Marshall Johnson	Commissioner
Dee Knaak	Commissioner
Mac McCollar	Commissioner
Don Storm	Commissioner

In the Matter of the Petition of Inland Steel Mining Company and Northern Electric Cooperative Association for Approval of the Purchase and Sale of Electricity at Retail

ISSUE DATE: October 25, 1996

DOCKET NO. E-130/SA-95-1262

ORDER DENYING RECONSIDERATION

PROCEDURAL HISTORY

On August 13, 1996 the Commission issued an Order in this case denying a joint petition by Inland Steel Mining Company (Inland) and Northern Electric Cooperative Association (NECA or the co-op) requesting approval of an electric service agreement. Under the agreement Inland would buy from NECA that portion of its electric service requirements it was not bound by contract to buy from its present provider, Minnesota Power and Light Company (Minnesota Power).

The Commission rejected the proposed agreement, finding that allowing Inland to take service from more than one supplier would violate the plain meaning of the Public Utilities Act and undermine the public policies it was designed to implement.

On August 29, 1996 Inland and NECA filed a joint petition for reconsideration, claiming the Commission's decision was unlawful, arbitrary and capricious, and unconstitutional.

On September 9, 1996 Minnesota Power, the Minnesota Department of Public Service, Cooperative Power Association, and the Residential and Small Business Utilities Division of the Office of the Attorney General filed replies urging denial of the petition.

The petition came before the Commission on October 17, 1996.

FINDINGS AND CONCLUSIONS

I. The Petition

Petitioners based their request for reconsideration on the following claims:

> (1) Fairness requires the Commission to rule on all issues potentially raised by the petition, not just the issues necessary to resolve it, to expedite judicial review.
>
> (2) The Commission misinterpreted the Public Utilities Act in finding it requires exclusive service arrangements between utilities and customers.
>
> (3) The Commission misinterpreted the public policy goals of the Public Utilities Act in finding they confirmed its interpretation of the statute.
>
> (4) The August 13 Order violates the contracts clause of the United States Constitution.
>
> (5) The August 13 Order is arbitrary and capricious in that it is inconsistent with precedent, statute, and sound policy.

II. Commission Action

The Commission has again reviewed the record and the arguments of the parties and concludes its original decision was correct for the reasons set forth in the Order. On reconsideration, however, petitioners raise two new claims -- that the Order violates the contracts clause of the United States Constitution and that fairness requires the Commission to resolve all issues, even those irrelevant to its decision, at once. These issues will be addressed in turn.

A. The Order Does Not Violate the Contracts Clause

Article I, section 10 of the United States Constitution provides in part as follows:

> No state shall . . . pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts . . .

Petitioners claim the Commission's Order impermissibly interferes with Inland's rights under its contract with Minnesota Power, which allegedly include the right to purchase part of its load from NECA, subject to a right of first refusal by Minnesota Power. The Commission finds no such right in the contract.

The contract between Inland and Minnesota Power mirrors and incorporates the terms of a tariff rider approved by the Commission, which states as follows:

> In the event that the Customer is permitted in the future to obtain electric service from a supplier other than the Company, the Company shall, in addition to retaining the right to serve the Allocated Interruptible Load, have the right of first refusal to provide service to the Customer (i.e., the Customer is obligated to purchase from the Company if the Company matches the total value to the Customer of the other supplier's bona fide written offer) for an additional amount of its electric service requirements which shall be equal in MW to the Customer's Allocated Interruptible Load during this eleven (11) year period. (Emphasis added.)

Clearly, then, the contract allows Inland to buy power from providers other than Minnesota Power, its assigned utility, only if "in the future" such purchases are allowed.[1] Nothing has changed since the contract was signed; such purchases are still not allowed. Therefore no right arising under the contract or tariff rider has been violated by the August 13 Order.

Similarly, the contract provides that every term in it is subject to future regulatory action by the Commission and other regulatory bodies:

> Company makes no representation as to the level or design of future rates which may be proposed by the Company for implementation, or implemented by the Minnesota Public Utilities Commission (MPUC) for electric service rendered Customer under this Amendment to Electric Service Agreement. Customer acknowledges that rates charged under the Service Agreement are not fixed, but that electric service is made available by Company at the rates and under the terms and conditions set forth in the currently applicable rate schedule and Electric Service Regulations or other superseding rate schedules and Electric Service Regulations in effect from time to time. All the rates and regulations referred to herein are subject to amendment and change by Company. Said amendments or changes may be subject to acceptance or approval by any regulatory body having jurisdiction thereof.

[1]The main contingency the rider was addressing was the possibility that the electric industry would be restructured in a way that would allow large customers to choose among different suppliers. The move toward deregulation at the federal level sensitized all parties to the possibility of major regulatory change at the state level.

Such provisions are always included in agreements between regulated utilities and their customers, because these utilities operate in monopoly environments and do not have the freedom to set their own rates, let alone grant their customers the right to buy power from non-assigned providers. The contract granted Inland no right to buy power from anyone but Minnesota Power unless and until Minnesota law permitted it.

For all these reasons the Commission rejects NECA/Inland's argument that Inland's contract with Minnesota Power gave it the right to buy power from NECA, and the argument that that right was unconstitutionally abrogated by the Commission's Order.

B. Fairness Does Not Require the Commission to Rule on All Issues

As the Commission explained in the August 13 Order:

> This case presents a cluster of interrelated and often interdependent issues. The threshold question is whether it is permissible, even in theory, for Inland to take service from more than one provider, given the Public Utilities Act's emphasis on exclusive service arrangements.
>
> If the answer to that question is yes, the next question is whether the "large customer exception" of Minn. Stat. § 216B.42 would allow Inland to shift part of its load from Minnesota Power to NECA. This could depend on whether Minnesota Power is serving Inland under the large customer exception or under the general service area provisions of the Public Utilities Act.
>
> If Minnesota Power is serving under the § 42 large customer exception, the question is whether § 42 operates as a one-time tool for making permanent service assignments or as a permanent mechanism for large rural customers to obtain the most economical energy available. If Minnesota Power is serving under the general service area provisions of the Public Utilities Act, the question is whether § 42 gives large customers at least one chance to bypass their assigned provider after original service assignments have been made.
>
> Finally, if the Commission decides under either scenario that § 42 could provide a legal basis for Inland to shift part of its load to NECA, the Commission must determine whether the proposed shift from Minnesota Power to NECA meets the public interest criteria set forth in § 42.

In short, this case presents at least six complex issues, some of which are inter-dependent. Petitioners claim fairness requires the Commission to resolve all of them at once, so petitioners can appeal all of them at once, saving time and money. The Commission disagrees, for several reasons.

First, the Commission generally declines to give advisory opinions, for the same reasons the courts do: to conserve the resources of the Commission and all parties, to ensure the integrity

and rigor of its decisionmaking processes, to exercise its quasi-judicial powers with the restraint those powers demand.

Advisory opinions of the kind sought here force parties to spend resources addressing issues that may never really be in dispute. This is not only a misuse of resources; it is inequitable to the parties who have already prevailed. Worse, it creates the danger that issues decided "just in case" will not benefit from the full development and vigorous advocacy essential to sound decisionmaking. Finally, it is inconsistent with the basic precept that judicial (and quasi-judicial) power is to be exercised only to the extent necessary to resolve actual conflicts amenable to judicial (and quasi-judicial) resolution.

Furthermore, this case is particularly unsuited for any sort of preemptive resolution, since examining the fact-intensive public interest considerations listed in Minn. Stat. § 216B.42, subd. 1 could require contested case proceedings, at great expense to all parties.

The Commission concludes fairness does not require, and in fact militates against, resolving all potential issues raised by the Inland/NECA petition.

C. Conclusion

For all the reasons set forth above, the Commission will deny the petition for reconsideration and affirm its August 13, 1996 Order.

ORDER

1. The petition for reconsideration of the August 13, 1996 Order in this case is denied.

2 This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (612) 297-4596 (voice), (612) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).